

HOUSE No. 1650

The Commonwealth of Massachusetts

PRESENTED BY:

Alice Hanlon Peisch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act providing against compelled disclosure of certain information by the news media.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Scott P. Brown	Norfolk, Bristol and Middlesex
Joan M. Menard	First Bristol and Plymouth
John D. Keenan	7th Essex
Barbara A. L'Italien	18th Essex
Denise Provost	27th Middlesex
Steven M. Walsh	11th Essex
Alice K. Wolf	25th Middlesex
Ruth B. Balser	12th Middlesex
Martha M. Walz	8th Suffolk
Charles A. Murphy	21st Middlesex
Alice Hanlon Peisch	14th Norfolk
Karen E. Spilka	Second Middlesex and Norfolk
Jay R. Kaufman	15th Middlesex
Cory Atkins	14th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1672 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PROVIDING AGAINST COMPELLED DISCLOSURE OF CERTAIN INFORMATION BY THE NEWS MEDIA.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of
the same, as follows:*

SECTION 1. This act may be cited as the "Free Flow of Information Act."

SECTION 2. Chapter 233 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following section:-

Section 84. (a) For the purposes of this section, the following terms shall have the following meanings:-

"Covered person", any person who is or has been an employee, agent, or independent contractor of any news media as defined here, who is or has been engaged in bona fide news gathering for such entity, and who obtained or prepared the news or information that is sought while serving in that capacity, or news media, or any parent, subsidiary, or affiliate of the news media as defined below to the extent that the subpoena or other compulsory process seeks news or information described in subsection (b) of this section.

"News or information", written oral, pictorial, photographic or electronically recorded information or communication concerning local, national, or worldwide events, or other matters.

"News media", any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution.

(b) (1) Except as provided in subsection (c), no entity of the judicial, legislative or executive branch of the commonwealth with the power to issue a subpoena or provide other compulsory process

shall compel any covered person, who is providing or has provided services for the news media to disclose:

(i) the source of any news or information procured by such covered person, or any information that would tend to identify such source, while providing services for the news media, whether or not such source has been promised confidentially: or

(ii) any news or information procured by the covered person, while providing services for the news media, that is not itself communicated in the news media, including any: notes; outtakes; photographs or photographic negatives; video or sound tapes; film or; other data, irrespective of its nature, that is not itself communicated in the news media.

(2) The protection from compelled disclosure described in subparagraph (1) shall apply to a supervisor, employer or any person assisting a covered person to whom said subparagraph (1) applies.

3) Any news or information obtained in violation of this section shall be inadmissible in any action, proceeding or hearing before any entity of the judicial legislative or executive branch of the commonwealth.

(c) A state entity may not compel a covered person to testify or produce any document in any proceeding or in connection with any issue arising under state law unless:

(i) disclosure of the identity of a source is necessary to prevent imminent and actual harm to public security from acts of terrorism;

(ii) compelled disclosure of the identity of a source would prevent such harm; and

(iii) the harm sought to be redressed by requiring disclosure clearly outweighs the public interest in protecting the free flow of information.

d)(1) A court may compel disclosure of news or information described in clause (ii) of paragraph (1) of subsection (b) and protected from disclosure under said subsection (b) if the court finds, after providing notice and an opportunity to be heard to the person or entity from whom the news or information is sought, that the party seeking the news or information has established by clear and convincing evidence that:

(i) the news or information is critical and necessary to the resolution of a significant legal issue before an entity of the judicial, legislative or executive branch of the commonwealth that has the power to issue a subpoena;

(ii) the news or information could not be obtained by any alternative means; and

(iii) there is an overriding public interest in the disclosure.

(2) A court may not compel disclosure of the source of any news or information described in clause (i) of paragraph (1) of subsection (b) and protected from disclosure under said subsection (b).

(e) The publication by the news media or the dissemination by a covered person while providing services for the news media of a source of news or information, or a portion of the news or information,

58 procured in the course of pursuing professional activities shall not constitute a waiver of the protection
59 from compelled disclosure that is described in subsection (b).